

SENATE....No. 18.

Commonwealth of Massachusetts.

IN SENATE, January 17th, 1853.

ORDERED, That the Committee on the Judiciary consider, and report upon, the expediency of amending, or repealing the act of 1852, c. 274, "concerning persons under sentence of death."

CHARLES CALHOUN, *Clerk.*

Commonwealth of Massachusetts.

IN SENATE, January 21st, 1853.

The Committee on the Judiciary, to whom was committed the order of the senate of the 17th inst., directing them to consider and report upon the expediency of amending or repealing, the act of 1852, c. 274, "concerning persons under sentence of death," beg leave to submit the following

REPORT,

and the accompanying bill.

The expediency of abolishing the penalty of death for crime has often been considered, debated, and acted upon, by previous legislatures in this Commonwealth; and many elaborate reports of committees upon that subject may be found among the legislative documents of former years. That question is not now submitted to this committee, and they do not intend to express any opinion concerning it. Only the question upon the expediency of amending or repealing the act of the last year, mentioned in the order, is for their consideration; and such, in the judgment of the committee, are the defects and imperfections of that act, that they are unanimously of opinion that it ought to be repealed, and they report the annexed bill for that purpose. The following considerations have influenced the minds of the committee:—

1. There is no repealing clause in that act repealing other laws, and parts of laws, inconsistent with it; and the statute law is now inconsistent with itself.

By the eighteenth section of the one hundred and forty-third chapter of the revised statutes of this Commonwealth, it is

enacted that when the sentence of confinement at hard labor for any term of time, is awarded against a female convict of whatever age, the court shall order such sentence to be executed, either in the house of correction or in the county jail, and *not in the State Prison*; and it is well known, that there are no proper arrangements there, nor any discipline there established, for women; and the committee are also informed, that there are several females now in prison within this Commonwealth, under indictment for capital offences, who are soon to be tried in the supreme judicial court. Now the first section of the act proposed to be repealed, enacts that *every person* (of course including females) convicted of a crime punishable with death, and sentenced to suffer such punishment, shall, at the same time, be sentenced to hard labor in the State Prison, until such punishment of death shall be inflicted. Also, the revised statutes, in c. 139, and § 13, direct, that the sentence of death shall, at the time directed by the warrant, be executed *in the walls of a prison of the county in which the conviction was had*, or within the enclosed yard of such prison. The act proposed to be repealed provides, that every person sentenced to suffer the punishment of death, shall at the same time, be sentenced to hard labor in *the State Prison*, UNTIL such punishment of death shall be inflicted. The punishment of death cannot be executed upon the same person in both places; and the sad consequences of executing such a punishment in the *wrong* place need not be stated. It is also to be considered, if the execution is to take place in the State Prison, by whom that solemn act is to be performed. The warden of the State Prison has no authority to execute the sentence, and the powers and duty of a sheriff, out of the county for which he is commissioned, might very seriously be questioned, although the fourteenth section of the same chapter of the revised statutes, requires that the sheriff and his deputies, of the county in which the conviction was had, shall be present at the execution. Such conflicts of laws must be very embarrassing to the executive officers, whose duty it may be to execute the most distressing sentence of the law.

2. It seems to the committee also to be a defect in the law proposed to be repealed, that it is not made the duty of the

attorney general, or any prosecuting officer, or the warden of the State Prison, at the expiration of the year of confinement, to call the attention of the governor and council, for the time being, to the case of a convict under sentence of death, and who may have been sentenced in the year preceding the election of such governor and council; nor is it made the duty of any one to move for a warrant of execution to be issued for the performance of the sentence; and if succeeding governors should omit, from any cause, to perform this painful duty, the punishment of death, in such cases, would virtually be abolished, contrary to the express requirements of existing laws. If it is the will of the legislature to abolish capital punishment, it had better be done directly, and unequivocally, and not indirectly or circuitously.

It also occurred to the committee that in the opinion of many persons it is a matter of very doubtful expediency, to suspend, *in all cases*, the execution of the sentence of death for a year; and it is quite debatable, whether, in many cases, this would be an act of philanthropy or of additional severity and suffering; but, if it is conceded that the duration of a year is not too long for repentance and a proper preparation for death, yet few persons will believe, that a State Prison, (not conducted upon the principle of the silent and separate system,) is a suitable place for such preparation. The constant and exacting employment in the work-shop of hard labor, the rules and ordinary discipline of the prison, the daily intercourse with other prisoners, which cannot be wholly prevented, and the collateral influences of such a place and of such company, in such a penitentiary, do not recommend such a residence as the most proper place for a person whose days on earth are numbered, and whose thoughts and reflections, from the passing of the sentence of death to the day of its execution, should be directed to more serious subjects than those, which the daily laborious task, or the usual intercourse with other culprits, commonly suggest, or make unavoidable.

It is not known to the committee that the former laws, usages and practices, which, after the passing of the sentence of death, have prevailed in this Commonwealth since the adoption of the constitution, until the last year, have produced any evil requir-

ing new legislation. No convict's execution has been hurried, or premature. A wise, judicious and humane chief magistrate has always used a sound discretion in fixing the time for the execution, and, in so doing, has always considered the circumstances of the prisoner, the evidence given at the trial, the probability of discovering new testimony in his favor, and the rightfulness of the verdict; and the same chief magistrate has had the power of pardon or commutation of punishment, if, in his opinion, the sentence of death ought not to be executed.

For the foregoing reasons, among others, the committee recommend the repeal of the act aforesaid, rather than its amendment, and submit the following bill for consideration, recommending its passage.

Per order,

SAMUEL D. PARKER, *Chairman.*

Commonwealth of Massachusetts.

In the year One Thousand Eight Hundred and Fifty-
Three.

AN ACT

To repeal "An Act concerning persons under sentence of
Death."

*BE it enacted by the Senate and House of Representatives
in General Court assembled, and by the authority of the
same, as follows :*

1 SECT. 1. The act entitled "An act concerning per-
2 sons under sentence of death," passed on the twentieth
3 day of May in the year eighteen hundred and fifty-
4 two, is hereby repealed, excepting so far as the said
5 act applies to persons already under sentence according
6 to its provisions.

1 SECT. 2. This act shall take effect from and after
2 its passage.